

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE: WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.
CV09-0134 MJP, CV09-0137 MJP, and
CV09-01557 MJP]

**[PROPOSED] REVISED
CONFIDENTIALITY ORDER
RELATING TO LOAN FILE
PRODUCTIONS**

**Hearing Date: November 25, 2011
w/o Oral Argument**

The Court, having considered the Memorandum and Declaration submitted by JPMorgan Chase Bank, N.A., Lead Plaintiff Doral Bank of Puerto Rico, Lead Plaintiff Policemen's Annuity and Benefit Fund of the City of Chicago and Named Plaintiff Boilermakers National Annuity Trust in support of the Supplemental Confidentiality Order, and good cause appearing therefor, hereby orders as follows with respect to the production of loan files in this action:

**[PROPOSED] REVISED CONFIDENTIALITY ORDER
RELATING TO LOAN FILE PRODUCTIONS - 1
Case No. C09-037-MJP**

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1 1. Nonparty Borrower Information. For purposes of this Order, “Nonparty
2 Borrower Information” shall mean any information that constitutes “nonpublic personal
3 information” within the meaning of the Gramm Leach Bliley Act, 15 U.S.C. § 6802, et seq.
4 and its implementing regulations, including, but not limited to, any portion of a mortgage loan
5 file or other document which includes financial or credit information for any person
6 (including any credit history, report or score obtained on any such person to determine the
7 individual’s eligibility for credit) together with personally identifiable information with
8 respect to such person, including, but not limited to, name, address, Social Security number,
9 loan number, telephone number, or place or position of work. As set forth in Paragraph 4, this
10 Order authorizes the disclosure of such Nonparty Borrower Information in this action.
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12 2. Non-waiver of Privileges. This Order is entered pursuant to Federal Rule of
13 Evidence 502(d). In order to allow for expeditious production of loan file documents, a
14 Producing Party may, at its sole option, produce such materials without detailed, or any,
15 review to determine whether privilege or other privilege or immunity from discovery applies
16 to some of the documents produced. In accordance with Federal Rule of Evidence 502(d) and
17 other applicable Rules, disclosure in the course of discovery of any document or information
18 shall not be deemed to waive—in this litigation or in any other Federal or State proceeding—
19 any applicable privilege or immunity from discovery that would otherwise attach to the
20 document or information produced or to other documents or information, including without
21 limitation the attorney-client privilege, the work-product doctrine, the joint defense or
22 common interest privilege, personal privacy protection, the bank examination privilege and
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1 the deliberative process privilege, regardless of the extent (if any) to which the Producing
2 Party has reviewed the document or information for privilege or other protection. Likewise,
3 where a Party has produced loan file documents in another action, investigation, or other
4 proceeding without detailed, or any, review to determine whether privilege or other immunity
5 from discovery applies, no Party shall claim that production of such documents in such other
6 action, investigation, or other proceeding constitutes a waiver of any privilege or protection
7 with respect to the documents produced.
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9 3. Clawback of Protected or Erroneously Produced Documents. The following
10 provision applies to all loan file documents produced in this action, and supersedes the
11 Stipulated Protective Order and Stipulated Order Regarding Clawback of Inadvertently
12 Produced Documents dated November 24, 2010 (Doc. 213) with regard to the production of
13 loan file documents, to the extent this provision and that Order conflict. Pursuant to Fed. R.
14 Evid. 502(d), if a Party (hereinafter, "Producing Party") at any time notifies any other Party
15 (hereinafter, "Receiving Party") that the Producing Party, for any reason, disclosed loan file
16 documents that are protected from disclosure under the attorney-client privilege, work product
17 doctrine, and/or any other applicable privilege or immunity from disclosure, or the Receiving
18 Party discovers such disclosure (in which case the Receiving Party shall give the Producing
19 Party prompt notice), the disclosure, pursuant to Rule 502(d), shall not be deemed a waiver –
20 in this litigation or in any other proceeding, including in Federal or State proceedings – of the
21 applicable privilege or protection.
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1 The Receiving Party shall upon request immediately return to the Producing Party or
 2 destroy all summaries or copies of such loan file documents, shall provide a certification of
 3 counsel that all such disclosed materials have been returned or destroyed, and shall not use
 4 such items for any purpose until further order of the Court. In all events, such return or
 5 destruction and certification must occur within five business days of receipt of the request.
 6 Within ten business days of the notification that the disclosed materials have been returned or
 7 destroyed, the Producing Party shall produce a privilege log with respect to the disclosed
 8 materials. The return of any Discovery Material to the Producing Party shall not in any way
 9 preclude the Receiving Party from moving the Court for a ruling that the disclosed
 10 information was never privileged; however, the Receiving Party cannot assert as a basis for
 11 the relief it seeks the fact or circumstance that such privileged documents have already been
 12 produced. Allegedly privileged documents shall remain protected against disclosure and use
 13 during the pendency of any dispute over their status. Nothing in this Order shall affect any
 14 Party's right to withhold from disclosure documents or information that are privileged or
 15 otherwise protected from disclosure.

16 4. Disclosure of Nonparty Borrower Information. To the extent any federal or
 17 state law or other legal authority governing the disclosure or use of Nonparty Borrower
 18 Information (hereinafter, "Nonparty Borrower Information Law") permits disclosure of such
 19 information pursuant to an order of a court, this Order shall constitute compliance with such
 20 requirement. To the extent any Nonparty Borrower Information Law requires a Party to
 21 obtain a court-ordered subpoena or give notice to or obtain consent, in any form or manner,
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1 from any person or entity before disclosure of any Nonparty Borrower Information, the Court
2 finds that, in view of the protections provided for the information disclosed in this Stipulation
3 and Order, the volume of documents to be produced and the ongoing oversight of the Court,
4 there is good cause to excuse such requirement, and this Order shall constitute an express
5 direction that the Party is exempted from obtaining a court-ordered subpoena or having to
6 notify and/or obtain consent from any person or entity prior to the disclosure of Nonparty
7 Borrower Information. To the extent that any Nonparty Borrower Information Law requires
8 that any person or entity be notified prior to disclosure of Nonparty Borrower Information
9 except where such notice is prohibited by court order, the Court directs that, in view of the
10 protections provided for the information disclosed in this Order, the volume of documents to
11 be produced and the ongoing oversight of the Court, the parties are explicitly prohibited from
12 providing such notice; provided, however, that this Order shall not prohibit either Party from
13 contacting any person or entity for any other purpose. Any Producing Party may seek
14 additional orders from this Court that such Party believes may be necessary to comply with
15 any Nonparty Borrower Information Law. Nothing in this Order shall prohibit a party from
16 designating any documents as CONFIDENTIAL under the Stipulated Protective Order and
17 Stipulated Order Regarding "Clawback" of Inadvertently Produced Documents (Doc. 213).
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21 5. Neither Plaintiffs nor Defendants shall use nonpublic personal information in
22 the loan files to contact the borrowers whose information has been disclosed.
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1 Having considered the foregoing, the Court hereby GRANTS Lead Counsel's Motion
2 for Entry of a Revised Confidentiality Order Relating to Loan File Productions;

3 Dated this ____ day of _____, 2011.
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6 MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

7 Presented by:

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9 CORR CRONIN MICHELSON
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[PROPOSED] REVISED CONFIDENTIALITY ORDER
RELATING TO LOAN FILE PRODUCTIONS - 6
Case No. C09-037-MJP

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